

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

TEAM MARKETING SERVICES, INC.	)	
	)	CIVIL ACTION NUMBER
	)	
Plaintiff	)	09C-08-067-JOH
	)	
v.	)	
	)	
TRENTON BRAKES, INC.	)	
	)	
Defendant	)	

*Submitted: February 26, 2010*

*Decided: June 16, 2010*

***MEMORANDUM OPINION***

*Upon Motion of Trenton Brakes, Inc. to Dismiss the Complaint - **DENIED***

***Appearances:***

Donald L. Gouge, Jr., Esquire, Wilmington, Delaware, Attorney for Plaintiff

Bayard J. Snyder, Esquire, of Snyder & Associates, Wilmington, Delaware, Attorney for Defendant

HERLIHY, Judge

Plaintiff, Team Marketing Services, Inc. entered into a consignment agreement with defendant, Trenton Brakes, Inc. Team Marketing was supposed to sell brake products and other items owned by Trenton Brakes for a commission. It alleges that Trenton Brakes withheld the valuable items it owned and allowed Team Marketing to sell only its “junk.” Further, Team Marketing alleges that Trenton Brakes shipped products containing asbestos to Team Marketing’s New Castle facility, requiring it to pay clean up fees.

Trenton Brakes moves this Court to dismiss the complaint based upon Superior Court Civil Rule 12(b)(2), arguing that Delaware courts do not have personal jurisdiction over Trenton Brakes, a New Jersey Corporation. After considering the contacts Trenton Brakes has with Delaware, this Court holds that Delaware’s long arm statute extends jurisdiction over Trenton Brakes and due process requirements do not mandate dismissal. The motion is **DENIED**.

### ***Factual Background***

Trenton Brakes, Inc. was a New Jersey Corporation with its principal and only place of business in Trenton, New Jersey. It was a machine shop that rebuilt brakes and distributed brakes and brake parts.<sup>1</sup> Team Marketing Services is a Delaware Corporation. It is a consignment company that sells other company’s goods for a commission.

Team Marketing and Trenton Brakes entered into a consignment agreement in which Team Marketing was to sell certain products on Trenton Brakes’ behalf. The agreement

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<sup>1</sup> Trenton Brakes is no longer in business.

called for Team Marketing to sell, at a specific minimum price, all inventory not sold by Trenton Brakes before December 31, 2008, and all machine shop equipment. Also, it listed a schedule of personal and real property that Team Marketing would sell if Trenton Brakes could not liquidate before December 31, 2008. In exchange for its efforts, Team Marketing was to receive 15% of the sale price.

The parties amended the consignment agreement, effective January 20, 2009, to state that “ALL SURPLUS ITEMS WILL BE LIQUIDATED FROM CONSIGNEES FACILITIES LOCATED AT 109 CARROLL DRIVE, NEW CASTLE DE. 19720.”<sup>2</sup>

On August 7, 2009, Team Marketing filed a complaint in this Court alleging that Trenton Brakes breached its contract by selling valuable items on its own behalf, thus depriving Team Marketing of commissions under the agreement. Team Marketing also alleges that Trenton provided it items containing asbestos, requiring a cleanup of its New Castle storage facility at a cost to Team Marketing.

Without answering the complaint, Trenton Brakes moved to dismiss. The Court heard oral arguments on Trenton Brakes’ original motion but ordered the parties to undertake additional discovery concerning jurisdiction and file supplemental briefs. The only new information contained in the supplemental filings detailed that Trenton Brakes contacted Team Marketing at its Delaware number after the principals from both companies met at a trade show.

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<sup>2</sup> An unexecuted copy of the agreement is attached to Marketing’s response to the motion to dismiss. However, the Court must draw the inference that such an amendment is binding.

### ***Parties' Contentions***

Trenton Brakes represents that it was New Jersey corporation with its principal place of business in Trenton, New Jersey. It states that it has never done any business in Delaware. Although the goods to be sold were eventually moved into Delaware, Trenton Brakes states that they were moved entirely by Team Marketing. Team Marketing brought its own vehicles to Trenton and retrieved the goods. Trenton Brakes argues that Team Marketing cannot transport goods into Delaware, and then attempt to argue Delaware has jurisdiction.

Trenton Brakes also argues that if this Court were to hold that Delaware's Long Arm Statute applies to the facts at hand, the Court would violate Trenton Brake's right to due process as guaranteed by the Fourteenth Amendment because it never received fair notice that it could be sued in Delaware.

Team Marketing responds that Trenton Brakes entered into a consignment agreement with Team Marketing knowing it was a Delaware corporation. The two companies then agreed to relocate the merchandise to Delaware in an attempt to utilize Delaware's favorable sales tax. Finally, it argues that Trenton Brakes would not suffer a violation of its right to due process by defending this claim in Delaware.

### ***Standard of Review***

The plaintiff bears the burden of establishing the court has jurisdiction to adjudicate

the claim before it.<sup>3</sup> When reviewing a motion to dismiss, the Court must view the record in the light most favorable to the non-moving party and draw all inference in that party's favor.<sup>4</sup>

### *Discussion*

In order to determine whether Delaware courts have personal jurisdiction over a party a two step test must be applied. The court must evaluate the parameters of Delaware's Long Arm Statute first, and, if it provides jurisdiction, then it must ensure the Court's exercise of that jurisdiction does not offend the Due Process Clause of the Fourteenth Amendment.<sup>5</sup>

Delaware's Long Arm Statute is codified at 10 *Del. C.* § 3104. Delaware Courts have construed the statute to allow jurisdiction to the maximum parameters of the Due Process Clause.<sup>6</sup> Section 3104(c) confers jurisdiction in one of six ways. Team Marketing responds to this motion by alleging that second circumstance applies. That confers jurisdiction when the defendant "[c]ontracts to supply services or thing in this State."<sup>7</sup> The Supreme Court has held that a single transaction can satisfy the requirement of §

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<sup>3</sup> *Mumford v. Carey's Diesel, Inc.*, 1995 WL 108885 (Del. Super.).

<sup>4</sup> *Harmon v. Eudaily*, 420 A.2d 1175 (Del. 1980).

<sup>5</sup> *LaNuova D & B S.p.A. v. Bowe Company, Inc.*, 513 A.3d 764, 768 (Del. 1986).

<sup>6</sup> *Transportes Aereos de Angola v. Ronair*, 544 F. Supp. 858, 864 (D. Del. 1982).

<sup>7</sup> 10 *Del. C.* § 3104(c)(2).

3104(c)(2).<sup>8</sup>

This Court examined § 3104(c)(2) in *Kane v. Coffman*.<sup>9</sup> There, Kane sued Coffman over her alleged breach of contract in a joint venture to co-author books, articles and other published materials.<sup>10</sup> The Court noted that Kane assumed a leadership role in this venture from her home in Wilmington. After Kane terminated the relationship due to Coffman's inability to produce professional quality writing, Coffman allegedly defamed Kane through emails and letters. Coffman, a Georgia resident, moved to dismiss the complaint against her for lack of jurisdiction.

This Court, in *Kane*, determined that it had jurisdiction because it found that there was a joint business venture run out of Kane's home in Delaware. It found that "at least a portion of Ms. Kane's claim arose out of the performance of the business or discharge of the contract."<sup>11</sup> It went on to state:

What is at issue is whether the parties mutually agreed to enter into a business arrangement or relationship. Because the business was conducted out of Ms. Kane's home in Delaware, the only conclusion that can be reached is that Ms. Coffman was part of a business based in, operating out of and supplied services in this state. Therefore, the Court finds that § 3104 confers jurisdiction over Ms. Coffman because she was doing business in

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<sup>8</sup> *LaNuova D & B*, 513 A.2d at 769.

<sup>9</sup> 2001 WL 914016 (Del. Super.).

<sup>10</sup> *Id.* at \*1.

<sup>11</sup> *Id.* at \*3.

Delaware and Ms. Kane's claims, at least in part, arise out of that business.<sup>12</sup>

Much of this case is similar to *Kane*. Here both parties entered into an agreement that created a business relationship. The addendum to the agreement makes it clear that both parties were aware that Trenton Brakes' goods would have been sold from Team Marketing's New Castle location if the contract were performed as expected. Trenton Brakes intended that Team Marketing discharge its contractual duties by selling Trenton Brakes' products in Delaware. Team Marketing would have no doubt utilized Delaware's business law, shipped or had Trenton Brakes' goods picked up from Delaware. It is clear that Team Marketing and Trenton Brakes each expected to utilize Delaware as the place of performance of the contract that is allegedly breached. As the Supreme Court has stated, "[I]f the claim sought to be asserted arose from the performance of business or the discharge of the contract, no further inquiry is required concerning any other indicia of the defendant's activity in this state."<sup>13</sup> This Court has jurisdiction under § 3104(c)(2).

Trenton Brakes relies upon this Court's decision in *Gunzl v. CJ Pony Parts*<sup>14</sup> for the proposition that a party shipping goods into the forum state does not meet Delaware's Long Arm Statute. *Gunzl* stated, as Trenton Brakes quotes in part:

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<sup>12</sup> *Id.* at \*4.

<sup>13</sup> *LaNuova D & B*, 513 A.2d at 768.

<sup>14</sup> 2008 WL 755272 (Del. Super.).

Even assuming that Gunzl has stated a sufficient claim against [defendant] Global, the Court finds no basis to exercise jurisdiction over Global. Global is a California corporation. It has no offices in Delaware. While it is true that Global shipped items to Gunzl in Delaware under the parties' contract, that is not sufficient to give our courts jurisdiction: "[i]n a case grounded in breach of contract, without bodily injury claims, mere shipment of goods into Delaware, without additional contact with Delaware, is not adequate evidence of the required minimum contacts with Delaware. Thus, assertion of personal jurisdiction over Defendant would not be fair or reasonable."<sup>15</sup>

Many of the same considerations are present, Trenton Brakes is not a Delaware company, it has no offices in Delaware, and it does not solicit nor has it ever conducted any previous business in Delaware; however, Trenton Brakes has a much closer tie to Delaware than Global had in *Gunzl*. It was a party to a contract that was not performed once the goods were shipped. Many times the accurate shipment of goods by the seller to the buyer constitutes the contract's complete performance. That was not the case here. Once the goods were shipped to Delaware there were still many steps that needed to be undertaken before all of the contract's terms were carried out. Team Marketing then had to procure a buyer for Trenton Brakes' goods, perhaps with its consent, and those goods needed to be picked up or shipped from Delaware. This is more than a mere shipment contract and the Delaware courts can properly adjudicate a dispute arising from it.

The second application requires the Court to determine whether its exercise of jurisdiction offends due process principles. The dispositive question is whether Trenton

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<sup>15</sup> *Id.* at \*3 (citing *Sheer Beauty, Inc. v. Medidterm Pharm. & Labs.*, 2005 WL 3073670, at \*3 (Del. Super.)).



Brakes engaged in sufficient minimum contacts with Delaware to require it to defend itself in Delaware courts consistent with traditional notions of fair play and substantial justice.<sup>16</sup> The defendant's action in the forum state must rise to the level that it should reasonably anticipate being haled into that state to defend an action there.<sup>17</sup> If the litigation arises from the efforts of the defendant to serve, directly or indirectly the market for its product in the forum state, that state will have jurisdiction.<sup>18</sup> "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities with the forum State, thus invoking the benefits and protections of its laws."<sup>19</sup>

The Court does not see any violation of Trenton Brakes right to due process by requiring it to defend a claim in Delaware. Trenton Brakes contacted Team Marketing at Team Marketing's office in Delaware. It also allowed its goods to be shipped to Delaware in order bolster their chances of being sold. Team Marketing raises the inference, which the Court must accept, that it chose Delaware because of its favorable tax treatment. It is apparent that Trenton Brakes availed itself of Delaware's laws when it decided to allow

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<sup>16</sup> *See International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

<sup>17</sup> *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.E.2d 490 (1980).

<sup>18</sup> *Id.* at 297-98.

<sup>19</sup> *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-40, 2 L.Ed.2d 1283 (1958).

its goods here. It should come as no surprise that it now needs to defend allegation in this state.

Finally, the Court takes notice of the temporal distance between Trenton, New Jersey and Wilmington, Delaware, site of the New Castle County Courthouse. Both Wilmington and Trenton sit directly on the Interstate 95 corridor. If the suit were filed in New Jersey it would only be slightly more convenient for Trenton Brakes and slightly less convenient for Team Marketing. Trenton Brakes has already employed competent Delaware counsel to defend this suit and it is not overly burdened by defending a suit in Delaware. The motion to dismiss is denied.

***Conclusion***

For the foregoing reasons, Trenton Brakes, Inc.'s motion to dismiss is **DENIED**.

**IT IS SO ORDERED.**

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**J.**